

APPENDIX 1—Correspondence with DFG



DEPARTMENT OF FISH AND GAME

<http://www.dfg.ca.gov>

Central Region
1234 East Shaw Avenue
Fresno, CA 93710
(559) 243-4005



July 10, 2008

Chase Hurley
Henry Miller Reclamation District, #2131
11704 W. Henry Miller Avenue
Dos Palos, California 93620

Subject: Determination on Lake or Streambed Alteration Notification No. 2008-0088-R4
Boundary Drain - Merced County

Dear Mr. Hurley:

This is in response to the notification package you submitted on May 9, 2008 to the Department of Fish and Game (Department). The location of your proposed Project activity as stated in your Notification will occur within or adjacent to the Boundary Drain in Section 33 of Township 09 South, Range 11 East, MDB&M approximately ¼ miles north of Henry Miller Avenue and 3 miles east of State Route 165, five miles northeast of the City of Los Banos in Merced County (Figure 1). Your proposed Project as described in your Notification shall consist of installing a flow meter within the wetted portion of the channel. No riparian vegetation will be disturbed and excavated banks will be restored to pre-Project conditions.

Based on the Department's review of the information you submitted and our knowledge of the Project site, we have determined that there is no existing fish or wildlife resource that will be substantially adversely affected by your Project, if it is constructed in the manner described in your notification, and provided Project activities take place between May 31 and October 15 to coincide with semi-aquatic species active periods to allow for escape from construction-related disturbance. A Lake Alteration Agreement will not be required for you to perform your proposed Project.

This letter is valid for the Project described above for one (1) year from the date of this letter. If your Project will extend beyond that date, a new Notification shall be submitted or a renewal shall be requested. If your Project is changed from the one proposed in your notification, you shall submit a separate notification regarding the new project.

You are responsible for complying with all applicable local, State, and Federal laws in completing your Project or activity. You may only proceed with your Project after you have obtained all other permits required by local, State, and Federal agencies.

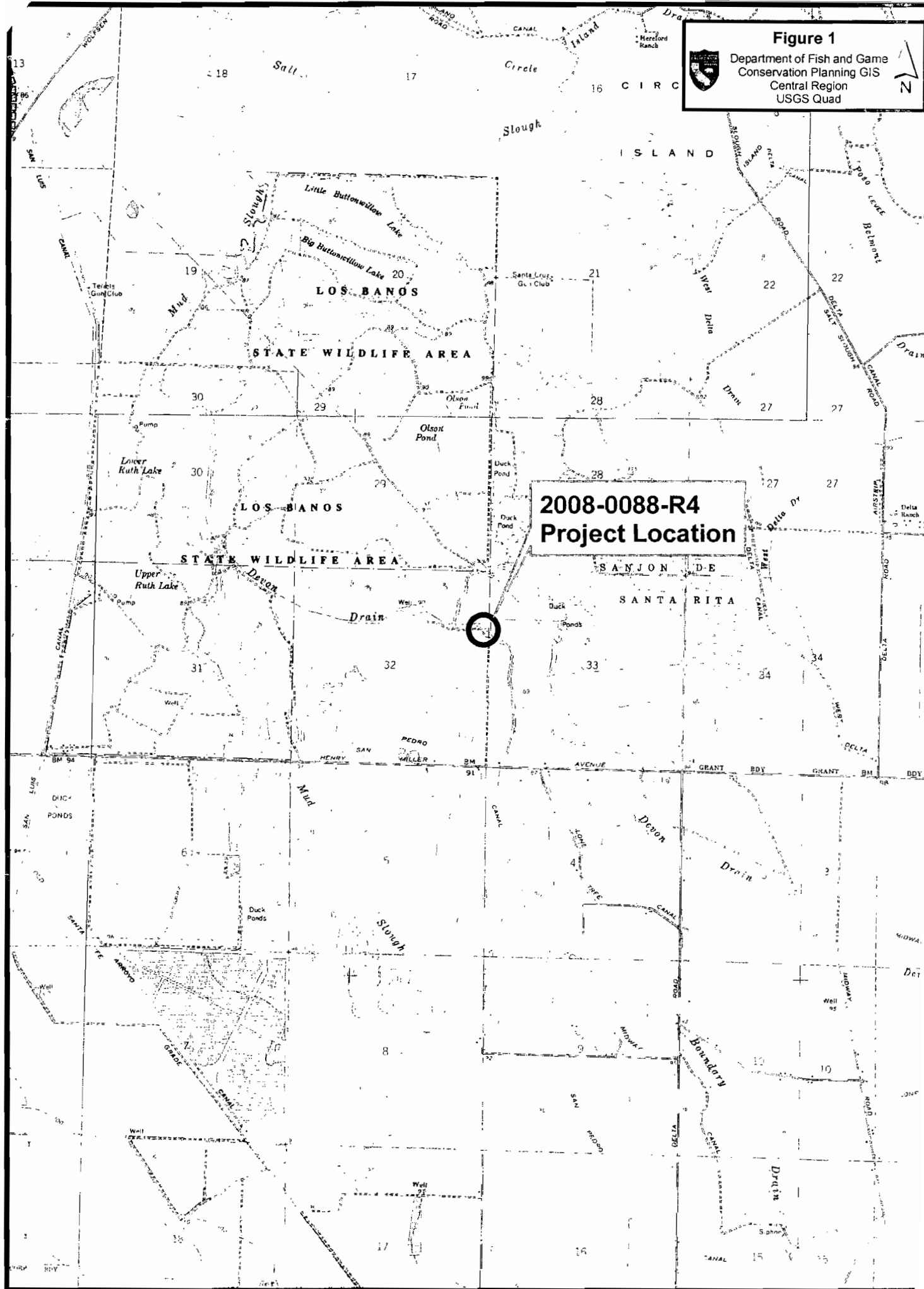
If you have any questions regarding this matter, please contact Brian Erlandsen, Environmental Scientist, at the above telephone number or address. Thank you for your cooperation.

Sincerely,


W. E. Loudermilk
Regional Manager



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DEPARTMENT OF FISH AND GAME

<http://www.dfg.ca.gov>

Central Region
1234 East Shaw Avenue
Fresno, CA 93710
(559) 243-4005



October 27, 2008

Chase Hurley
Henry Miller Reclamation District #2131
11704 West Henry Miller Avenue
Dos Palos, California 93620

Subject: Stream Alteration Agreement No. 2008-0155-R4
West Delta Drain - Merced County

Dear Mr. Hurley:

The Department of Fish and Game (Department) has determined that your Project described in Stream Alteration Agreement No. 2008-0155-R4 is exempt from the California Environmental Quality Act (CEQA), and will file a Notice of Exemption for your Project. The Notice of Exemption will be filed with the Office of Planning and Research, in accordance with CEQA.

Your copy of the signed agreement is enclosed. This completes the Department's agreement process. You may proceed with your Project according to the terms and provisions of your Stream Alteration Agreement if you have obtained all other permits required by local, other State, and Federal agencies. The Department's determination that your Project is exempt from CEQA may be legally challenged within 35 days following the filing of the Notice of Exemption. As a result, you may wish, but are not required, to delay commencement of your Project until after the 35-day period expires.

If you have any questions regarding this matter, please contact Annette Tenneboe, Environmental Scientist, at the above letterhead address or by telephone at (559) 243-4014, extension 231. Thank you for your cooperation.

Sincerely,


W. E. Loudermilk
Regional Manager

Enclosure

RECEIVED
OCT 28 2008

BY 

NOTICE OF EXEMPTION

To: Office of Planning and Research
Post Office Box 3044
Sacramento, California 95812-3044

From: California Department of Fish and Game
Central Region
1234 East Shaw Avenue
Fresno, California 93710

Project Title: West Delta Drain Flowmeter Installation, Agreement No. 2008-0155-R4

Project Location (Specific): West Delta Drain, adjacent to Salt Slough, approximately 3 miles northwest of the intersection of Henry Miller and Hereford Roads, in the Section 21, Township 09 South, Range 11 East MDB&M

Project Location (City and County): Dos Palos, Merced County

Description of Project: Remove an existing check structure and discharge pipe and install a new flow meter. A temporary coffer dam will be constructed to keep water out of the construction area. The project will result in construction activities within a 0.011 acre footprint (60 feet long by 12 feet wide). Work will occur during low flow within the stream, and disturbed areas will be recontoured and revegetated where applicable.

Name of Public Agency Approving Project: California Department of Fish and Game (Reg. 4)

Name of Agency or Person Carrying Out Project: Henry Miller Reclamation District #2131

Exempt Status (Class and CEQA Guidelines Section): 15302 (c), Class 2: Replacement of an existing structure (check station) involving minimal expansion beyond the existing structure. 15304 (f) Class 4: Minor alteration of land where the surface is restored.

Reasons Why Project is Exempt: The Project is minor in nature and will have no significant environmental impacts if completed under the protective features included in the Stream Alteration Agreement No. 2008-0155-R4

Lead Agency Contact Person: Annette Tenneboe

Phone: (559) 243-4014 x 231

Signature:

William E. Loudermilk
William E. Loudermilk

Date: 10-27-08

Title:

for
Regional Manager, Central Region

☒ Signed by Lead Agency

Date received for filing at OPR: __

☐ Signed by Applicant



AGREEMENT

**California Fish and Game Code Section 1602
Stream Alteration Agreement No. 2008-0155-R4
West Delta Drain – Merced County**

Parties:

California Department of Fish and Game
Central Region
1234 East Shaw Avenue
Fresno, California 93710

Mr. Chase Hurley
Henry Miller Reclamation District #2131
11704 West Henry Miller Avenue
Dos Palos, California 93620

WHEREAS:

1. Mr. Chase Hurley, representing the Henry Miller Reclamation District #2131, (jointly referred to as the "Operator"), on July 31, 2008 notified ("Notification" No. 2008-0155-R4) the Department of Fish and Game ("Department") of the intent to divert or obstruct the natural flow of, or change the bed or banks of, or use materials from West Delta Drain, a tributary to Salt Slough, in Merced County, a water over which the Department asserts jurisdiction pursuant to Division 2, Chapter 6 of the California Fish and Game Code.

2. The Operator may not commence any activity that is subject to Fish and Game Code Sections 1600 et seq. until the Department has found that such Project will not substantially adversely affect an existing fish or wildlife resource or until the Department's proposals, or the decisions of a panel of arbitrators, have been incorporated into such projects.

3. Fish and Game Code Sections 1600 et seq. make provisions for the negotiation of agreements regarding the delineation and definition of appropriate activities, Project modifications and/or specific measures necessary to protect fish and wildlife resources.

4. The Department has determined that without the mitigative features identified in this Agreement, the activities proposed in the Notification could substantially adversely affect fish and wildlife.

Agreement 2008-0155-R4
Henry Miller Reclamation District
West Delta Drain-Merced County

1 **NOW THEREFORE, IT IS AGREED THAT:**

2
3 1. The receipt of this document ("Agreement"), by the Operator, satisfies the Department's
4 requirement to notify the Operator of the existence of an existing fish and wildlife resource that
5 may be substantially adversely affected by the Project that is described in the Notification.

6
7 2. The contents of this Agreement constitute the Department's proposals as to measures
8 necessary to protect fish and wildlife resources, and satisfy the Department's requirement to
9 submit these proposals to the Operator.

10
11 3. The signature of the Operator's representative on this Agreement constitutes the Operator's
12 commitment to incorporate Department's proposals into the Project described in the Notification.

13
14 4. This Agreement does not exempt the Operator from complying with all other applicable
15 local, State and Federal law, or other legal obligations.

16
17 5. This Agreement, alone, does not constitute or imply the approval or endorsement of a
18 Project, or of specific Project features, by the Department of Fish and Game, beyond the
19 Department's limited scope of responsibility, established by Code Sections 1600 et seq. This
20 Agreement does not therefore assure concurrence, by the Department, with the issuance of
21 permits from this or any other agency. Independent review and recommendations shall be
22 provided by the Department as appropriate on those projects where local, State or Federal
23 permits, or environmental reports are required.

24
25 6. This Agreement does not authorize the "take" (defined in Fish and Game Code Section 86
26 as hunt, pursue, catch, capture, or kill; or attempt to hunt, pursue, catch, capture, or kill) of State-
27 listed threatened or endangered species. If the Operator, in the performance of the agreed work,
28 discovers the presence of a listed species in the Project work area, work shall stop immediately.
29 The Operator shall not resume activities authorized by this Agreement until such time as valid
30 "take" permits are obtained from Department pursuant to Fish and Game Code Sections 2081(a)
31 and 2081(b) as appropriate.

32
33 7. To the extent that Provisions of this Agreement provide for the diversion of water, they are
34 agreed to with the understanding that Operator possesses the legal right to so divert such water.

35
36 8. To the extent that the Provisions of this Agreement provide for activities that require the
37 Operator to trespass on another owner's property, they are agreed to with the understanding that
38 the Operator possesses the legal right to so trespass.

39
40 9. To the extent that the Provisions of this Agreement provide for activities that are subject to
41 the authority of other public agencies, said activities are agreed to with the understanding that all
42 appropriate permits and authorizations shall be obtained prior to commencing agreed activities.

43
44 10. All Provisions of this Agreement remain in force throughout the term of the Agreement.
45 Any Provision of the Agreement may be amended at any time, provided such amendment is
46 agreed to in writing by both parties. Mutually approved amendments become part of the original

1 Agreement and are subject to all previously negotiated Provisions. The Agreement may be
2 terminated by either party, subject to 30 days written notification.

3
4 11. The Operator shall provide a copy of the Agreement to the Project supervisors and all
5 contractors and subcontractors. Copies of the Agreement shall be available at work sites during
6 all periods of active work and shall be presented to Department personnel upon demand.

7
8 12. The Operator agrees to provide the Department access to the Project site at any time to
9 ensure compliance with the terms, conditions, and Provisions of this Agreement.

10
11 13. The Operator and any contractor or subcontractor, working on activities covered by this
12 Agreement, are jointly and separately liable for compliance with the Provisions of this
13 Agreement. Any violation of the Provisions of this Agreement is cause to stop all work
14 immediately until the problem is reconciled. Failure to comply with the Provisions and
15 requirements of this Agreement may result in prosecution.

16
17 14. The Operator assumes responsibility for the restoration of any fish and wildlife habitat
18 which may be impaired or damaged either directly or, incidental to the Project, as a result of
19 failure to properly implement or complete the mitigative features of this Agreement, or from
20 activities which were not included in the Operator's Notification.

21
22 15. It is understood that the Department enters into this Agreement for purposes of establishing
23 protective features for fish and wildlife, in the event that a Project is implemented. The decision
24 to proceed with the Project is the sole responsibility of the Operator, and is not required by this
25 Agreement. It is agreed that all liability and/or incurred costs, related to or arising out of the
26 Operator's Project and the fish and wildlife protective conditions of this Agreement, remain the
27 sole responsibility of the Operator. The Operator agrees to hold harmless and defend the
28 Department of Fish and Game against any related claim made by any party or parties for personal
29 injury or other damage.

30
31 16. The terms, conditions, and Provisions contained herein constitute the limit of activities
32 agreed to and resolved by this Agreement. The signing of this Agreement does not imply that the
33 Operator is precluded from doing other activities at the site. However, activities not specifically
34 agreed to and resolved by this Agreement are subject to separate notification pursuant to Fish and
35 Game Code Sections 1600 et seq.

36
37 **California Environmental Quality Act (CEQA) Compliance:** In approving this Agreement,
38 the Department is independently required to assess the applicability of CEQA. The features of
39 this Agreement shall be considered as part of the overall Project description.

40
41 If the Department determines that CEQA review is required, as a CEQA Lead Agency the
42 Department shall be responsible for preparing and circulating the appropriate document
43 (Negative Declaration/Environmental Impact Report) and will make Findings and submit a
44 Notice of Determination to the State Clearinghouse. Alternatively, the Department may

Agreement 2008-0155-R4
Henry Miller Reclamation District
West Delta Drain-Merced County

1 determine that the Project, as mitigated by the Provisions of this Agreement, is Exempt from
2 CEQA, in which case, a Notice of Exemption will be filed with the State Clearinghouse.

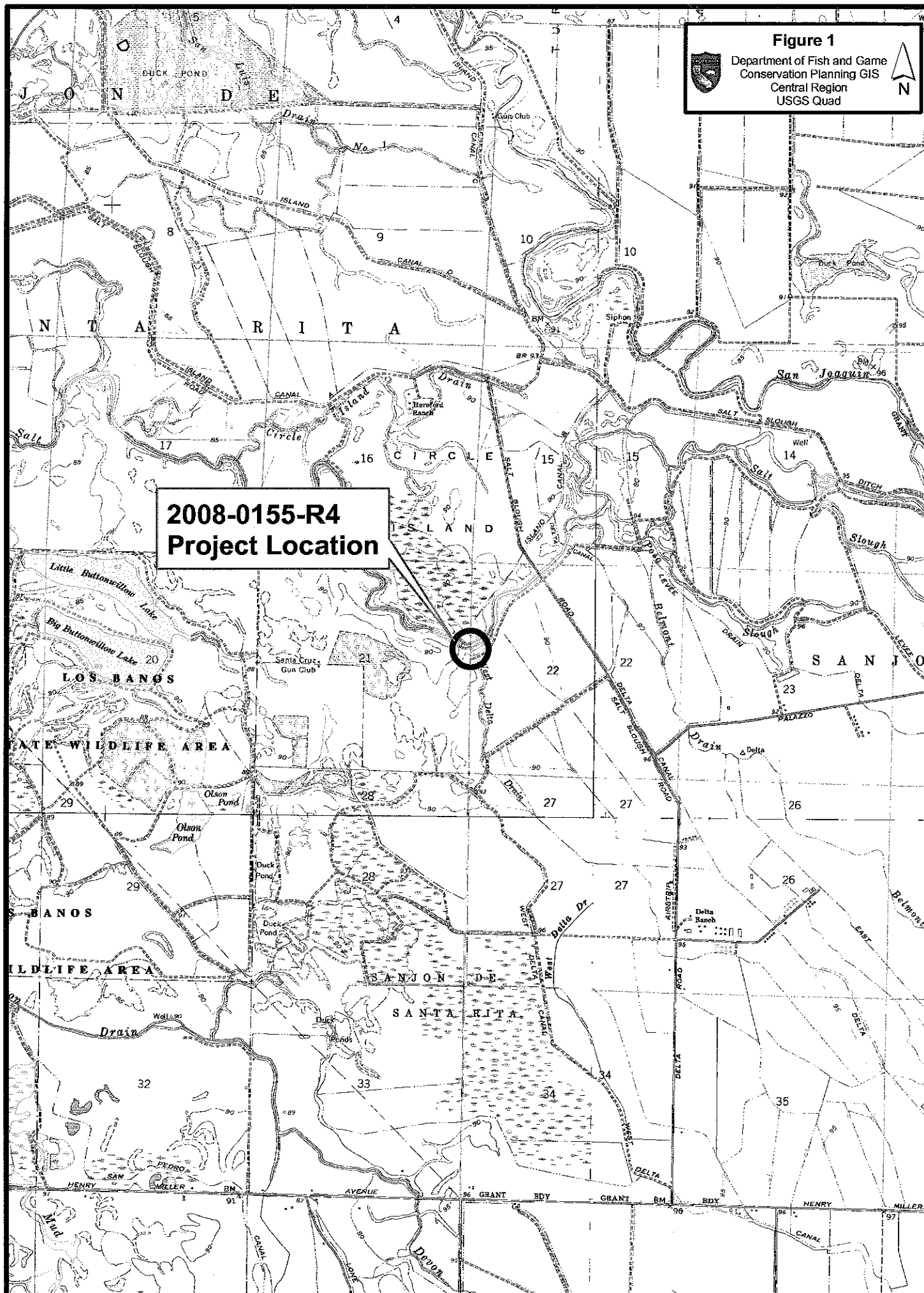
3
4 This Agreement contains a Monitoring and Reporting Program (MRP), to incorporate monitoring
5 and reporting requirements for the activities authorized in this Agreement.

6
7 **Project Location:** The work authorized by this Agreement shall occur within or adjacent to the
8 West Delta Drain, adjacent to Salt Slough, approximately 3 miles northwest of the intersection of
9 Henry Miller and Hereford Roads, in the Section 21, Township 09 South, Range 11 East
10 MDB&M (Figure 1), located within Merced County, California. Unless changes are submitted
11 and approved by the Department, the Project shall be built in the location indicated on the
12 maps/drawings that were submitted with the Notification.

13
14 **Project Description:** The Operator's Notification includes Fish and Game Notification Form
15 FG2023, maps, and other submitted information. The Notification comprises the Operator's
16 Project description, and it is used as the basis for establishing the protective Provisions that are
17 included in this Agreement. Any changes or additions to the Project as described in the
18 Notification shall require additional consultation and protective Provisions. The Department's
19 CEQA Determination is based upon the Operator's commitment to full implementation of the
20 Provisions of this Agreement. The Operator proposes the following scope of work. The bulleted
21 items comprise the activities authorized by this Agreement.

- 22
23 • Remove the existing check structure and discharge pipe and install a new flow meter.
24
25 • Install two 10 foot wing walls upstream of the existing check structure to create a channel 6
26 feet wide.
27
28 • Install a Doppler flow meter on one (1) of the wing walls.
29
30 • Construct a temporary cofferdam with clean, imported fill.
31
32 • Construct temporary coffer dams immediately upstream if any water is still present during
33 Project initiation.
34
35 • A portable pump will drain water around the construction site and discharge it downstream
36 of the construction site.
37
38 • A sump pump will be installed within the construction site to remove water arising from
39 groundwater sources and the pumped water will be discharged downstream of the Project
40 site.
41
42 • A temporary disturbance area of approximately 10 feet up and downstream will be affected
43 by construction activities, resulting in 0.011 acres (60 feet long by 12 feet wide impact
44 area) of temporary and permanent disturbed area.

Figure 1
Department of Fish and Game
Conservation Planning GIS
Central Region
USGS Quad



- 1 • Staging and access areas will be located on graded areas and the top of the existing drain
2 berm, and site access will be limited to existing roads.
3
- 4 • Construction equipment will include an excavator, concrete truck, dump truck, pick-up
5 trucks, and drain pumps.
6

7 **Plant and Animal Species of Concern:** This Agreement is intended to minimize and mitigate
8 adverse impacts to the sensitive fish and wildlife resources that occupy the area of the West
9 Delta Drain, including the State and Federal threatened giant garter snake (*Thamnophis gigas*),
10 State species of special concern western pond turtle (*Actinemys marmorata*), Valley sacaton
11 grassland, and the immediate adjacent habitat, as well as birds, mammals, fish, reptiles,
12 amphibians, invertebrates and plants that comprise the local ecosystem.
13

14 **PROVISIONS:**

15 General

16
17
18 1. Agreed activities within the stream may commence after the Department has signed this
19 Agreement and pre-Project protective features and Provisions are implemented. This Agreement
20 shall remain in effect for three (3) years beginning on the date signed by the Department. If the
21 Project is not completed prior to the expiration date defined above, the Operator shall contact the
22 Department to negotiate a new expiration date and any new requirements.
23

24 2. The Operator shall submit a construction/work schedule to the Department (mail, or fax to
25 (559) 243-4020, with reference to Agreement 2008-0155-R4) prior to beginning any activities
26 covered by this Agreement. The Operator shall also notify the Department upon the completion
27 of the activities covered by this Agreement.
28

29 3. Prior to starting Project activities, all workers shall have received training from the
30 Operator's staff, or approved alternate trainer, on the contents of this Agreement, the resources at
31 stake, and the legal consequences of non-compliance.
32

33 Flagging/Fencing

34
35 4. The Operator shall identify the upstream and downstream limits of the required
36 encroachment into West Delta Drain, and any required vehicle access corridors. These work area
37 limits shall be identified with brightly-colored flagging. These limits shall be identified by the
38 Operator prior to construction. Flagging shall be maintained in good repair for the duration of
39 the Project. All areas within the riparian zone/flood plane of the stream, but beyond the
40 identified work area limits, shall be considered Environmentally Sensitive Areas (ESA) and shall
41 not be disturbed.

1 Listed/Sensitive Species

2
3 5. This Agreement does not allow for the "take," or "incidental take," of any State- or
4 Federal-listed threatened or endangered species. The Operator affirms that no "take" of listed
5 species will occur as a result of this Project and will take prudent measures to ensure that all
6 "take" is avoided. The Operator acknowledges that they fully understand that they do not have
7 State "incidental take" authority. If any State-or Federal-listed Threatened or Endangered species
8 occur within the proposed work area or could be impacted by the work proposed, and thus
9 "taken" as a result of Project activities, the Operator is responsible for obtaining and complying
10 with required State and Federal threatened and endangered species permits or other written
11 authorization before proceeding with this Project.

12
13 6. Liability for any "take," or "incidental take," of such listed species remains the separate
14 responsibility of the Operator for the duration of the Project.

15
16 7. The Operator shall immediately notify the Department of the discovery of any such rare,
17 threatened, or endangered species prior to and/or during construction.

18
19 8. Pre-activity surveys for sensitive species including rare, threatened, endangered, and fully-
20 protected species shall be conducted by a qualified biologist within 30 days prior to
21 commencement of the proposed construction activity or as specified within current survey
22 protocols. The Operator shall notify the Department of the discovery of any such rare,
23 threatened, or endangered species prior to commencement of construction. Surveys must be
24 conducted on the "work area" and access routes. The purpose of pre-activity surveys is to avoid
25 intentional and "incidental take," confirm previous observations, identify any subsequent
26 occupation of the stream corridor and other work areas by listed species, and clearly mark all
27 resources to be avoided by Project activities. All surveys for threatened or endangered species
28 shall be done in accordance with the appropriate protocols. Surveys for any State threatened,
29 endangered, or fully-protected species shall be completed unless appropriate preconstruction
30 surveys determine the lack of habitat for these species or potential habitat is flagged and avoided.

31
32 9. A qualified biological monitor shall be available on-site during all Project activities. The
33 biologist shall walk immediately ahead of the equipment during all ground disturbing activities,
34 as they occur, in areas that have not been recently disturbed.

35
36 10. If any confirmed precincts, burrows, or occupied habitats are discovered on, or within 250
37 feet of any work site, all potentially disturbing activities shall be halted immediately and work
38 shall not resume until protective buffer zones are established in consultation with the
39 Department.

40
41 Wildlife

42
43 11. If any wildlife is encountered during the course of construction, said wildlife shall be
44 allowed to leave the construction area unharmed.

1 Aquatic and Semi-aquatic wildlife

2
3 12. A qualified biologist shall monitor the affected section of West Delta Drain to ensure
4 aquatic animals are not stranded due to diversion and dewatering activities. Reasonable efforts
5 shall be made to carefully capture and transport stranded aquatic wildlife to upstream or
6 downstream areas as appropriate. Captured aquatic animals shall be placed in buckets filled with
7 water from West Delta Drain prior to transport.
8

9 13. All in-stream work must be performed in isolation from surface water flow. The operator
10 shall construct a temporary cofferdam to divert flows around in-stream work areas (see Diversion
11 and Dewatering). Upon Project completion, diversion structures shall be removed from the
12 stream in such a manner as to allow for the least amount of disturbance to the substrate. Clean
13 river gravel, if used, may be left in the stream, but stream flow must be returned to its natural
14 course.
15

16 14. If dewatering of the work site within the cofferdam occurs by pumping, intakes shall be
17 completely screened with wire mesh not larger than 0.5-millimeters to prevent aquatic/semi-
18 aquatic wildlife from entering the pump system. Water shall be released or pumped in a manner
19 and at an appropriate rate to maintain unimpeded downstream flows during construction. Upon
20 completion of construction activities, any barriers to flow shall be removed in a manner that
21 returns stream flow to its natural channel with the least disturbance to the substrate.
22

23 Birds

24
25 15. To protect nesting birds, construction shall not occur from February 15 through July 1
26 unless the following surveys are completed by a qualified biologist.
27

28 Raptors: Survey for nesting activity of raptors, with emphasis on Swainson's hawks (*Buteo*
29 *swainsoni*), within a 500-foot radius of the construction site. Surveys shall be conducted
30 at appropriate nesting times and concentrate on mature trees. If any active nests are
31 observed, these nests and nest trees shall be designated an ESA and protected (while
32 occupied) during Project construction.
33

34 Songbird Species: Survey riparian areas for nesting songbird activity within a 100-foot
35 radius of the defined work area two (2) to three (3) weeks before construction begins. If
36 any nesting activity is found, the Operator shall contact the Department and avoidance,
37 minimization, and mitigation measures, specific to each incident, shall be developed.
38

39 Swallows: If work cannot be avoided on the check structure when it would disturb nesting
40 swallows (March 1 through September 1), then prior to February 15 of each year, the
41 Operator, under the guidance of a qualified biologist, shall remove all existing nests which
42 would be destroyed by the Project. The Operator shall continue to discourage new nest
43 building in places where they would be disturbed, using methods developed in consultation
44 with the Department. Following the initial nest removal, continued removal of new nests
45 and hazing must be repeated as long as the swallows continue to attempt to build nests, or

1 until a swallow exclusion device is installed. Where disturbance will occur, nesting must
2 be discouraged throughout the Project term.
3

4 Vegetation

5

6 16. The disturbance or removal of vegetation shall not exceed the minimum necessary to
7 complete operations (with the exception of exotic plant species) and shall only occur within the
8 defined work area. Precautions shall be taken to avoid other damage to vegetation by people or
9 equipment.

10
11 17. No removal of native riparian shrubs or trees will occur as a result of Project
12 implementation.
13

14 Diversion and Dewatering (Also see Provisions 11 through 13 above)

15

16 18. Prior to any ground disturbance and dewatering of the reservoir, the Operator shall submit a
17 Diversion and Dewatering Plan for Department review and approval. Water drafting, pumping,
18 or other water diversion shall be done in a manner that is not harmful to fish or other aquatic or
19 semi-aquatic wildlife. Pump inflow tubes or hoses shall be contained within a 0.5-millimeter
20 mesh-screened cage to exclude aquatic wildlife that may otherwise be harmed in the process.
21

22 19. Any dewatering activities shall be done in a manner that prevents pollution and/or siltation
23 of downstream reaches.
24

25 Fish Passage and Sufficient Downstream Flow

26

27 20. When any artificial obstruction is being constructed, maintained, or placed in operation,
28 within the active channel, sufficient water shall at all times be allowed to pass downstream to
29 maintain aquatic life below the obstruction pursuant to Fish and Game Code Section 5937.
30

31 21. Artificial obstructions placed within the stream shall not represent a barrier to the natural
32 movement of fish pursuant to Fish and Game Code Section 5948. If the Department determines
33 installed structures are not providing adequate passage the Operator shall make any and all
34 necessary modifications to correct the problem.
35

36 Structures

37

38 22. The Operator confirms that any and all structures and constructed features shall be properly
39 aligned and otherwise engineered, installed, and maintained, to assure resistance to washout, and
40 to erosion of the stream bed, stream banks and/or fill and that they will not cause long-term
41 changes in water flows that adversely modify the existing upstream or downstream stream
42 bed/bank contours or increase sediment deposition.

1 Erosion

2
3 23. The Operator shall develop plans to control erosion and stabilize areas subject to ground
4 disturbance during construction. A Construction Period Erosion Prevention and Contingency
5 Plan shall be submitted for Department approval and implemented prior to commencement of
6 Project activities. The Plan may include or be comprised of a statement of Best Management
7 Practices (BMPs), winterization plan, etc. used to prevent pollution of surface water.
8

9 24. Silty water shall not be discharged into the stream, or created within the stream. The
10 Operator's management measures addressing siltation shall be included in its Construction
11 Period Erosion Prevention and Contingency Plan described above. Precautions to minimize
12 siltation may require that instream work site be isolated so that silt or other deleterious materials
13 are not allowed to pass into the stream and to downstream reaches. If it is determined that silt
14 levels resulting from Project-related activities constitute a threat to aquatic life, activities
15 associated with the siltation shall be halted until effective Department-approved control devices
16 are installed, or abatement procedures are initiated.
17

18 25. All disturbed soils within the Project site shall be stabilized to reduce erosion potential,
19 both during and following construction. Planting, seeding with native species, and mulching is
20 conditionally acceptable. Where suitable vegetation cannot reasonably be expected to become
21 established, non-erodible material shall be used for such stabilization. Any installation of non-
22 erodible material, not included in the original Project description, shall be coordinated with the
23 Department. Coordination may include the negotiation of additional Agreement provisions for
24 this activity (see Restoration below).
25

26 Fill/Spoil

27
28 26. Dredged material and spoil storage sites shall not be located within the stream or in
29 adjacent wetlands, where it will be washed into the stream or adjacent wetland, or where it will
30 cover aquatic or riparian vegetation.
31

32 27. Rock, gravel, and/or other materials shall not be imported into or moved within the stream,
33 except as otherwise addressed in this Agreement.
34

35 Vehicles

36
37 28. Vehicles shall not be operated in areas where surface water is present. Vehicles shall only
38 operate in the channel during naturally dry conditions or while the affected section of stream is
39 dewatered (see Diversion and Dewatering above).
40

41 29. Vehicles operated in the stream channel shall be limited to the minimum necessary to
42 complete Project activities. Ingress and egress corridors shall be minimized and restricted to
43 predetermined locations where impacts to riparian vegetation are minimal. All other areas
44 adjacent to the work site shall be considered an ESA and shall remain off-limits to construction

1 equipment. Vehicle corridors and the ESA shall be identified by the Operator and shall be
2 fenced/flagged as described above.

3
4 30. Any equipment or vehicles driven and/or operated within or adjacent to the stream shall be
5 checked and maintained daily to prevent leaks of materials that could be deleterious to aquatic
6 and terrestrial life.

7
8 31. Fueling and maintenance of vehicles, other equipment, and staging areas shall occur at least
9 75 feet from any riparian habitat or water body. The Operator shall ensure contamination of
10 habitat does not occur during such operations.

11
12 Pollution

13
14 32. Raw cement, concrete or washings thereof, asphalt, drilling fluids or lubricants, paint or
15 other coating material, oil or other petroleum products, or any other substances which could be
16 hazardous to fish or wildlife resulting from or disturbed by Project-related activities, shall be
17 prevented from contaminating the soil and/or entering the channel.

18
19 33. Prior to the onset of work, the Operator shall provide the Department with a Spill Response
20 Plan to facilitate prompt and effective response to any accidental spills. All workers shall be
21 informed of the importance of preventing spills and of the appropriate measures to take should a
22 spill occur. The cleanup of all spilled materials shall begin immediately. The Department shall
23 be notified immediately by the Operator of any spills.

24
25 34. Staging and storage areas for equipment, materials, fuels, lubricants, and solvents shall be
26 located outside the stream channel and banks. Stationary equipment such as motors, pumps,
27 generators, compressors and welders, located within or adjacent to the stream, shall be positioned
28 over drip-pans.

29
30 35. All Project-generated debris, materials and rubbish shall not be deposited in the stream and
31 shall be removed from areas where such materials could be washed into the stream.

32
33 36. The Operator and all contractors shall be subject to the water pollution regulations found in
34 the Department of Fish and Game Code Sections 5650 and 12015.

35
36 Restoration

37
38 37. Project-generated material and debris shall be removed from the Project site following
39 completion of construction. All Project-generated debris shall be disposed of in a legal manner.

40
41 38. Structures and associated materials, not designed to withstand high seasonal flows, shall be
42 removed to areas above the high-water mark before such flows occur.

1 39. Restoration shall include the revegetation of all disturbed soils and new fill, including
2 recontoured slopes and all other cleared areas, with locally native grasses, riparian vegetation, or
3 other native plants as appropriate.
4

5 **MONITORING AND REPORTING PROGRAM (MRP):**
6

7 PURPOSE OF THE MRP
8

9 The purpose of the MRP is to ensure that the protective measures required by the Department are
10 properly implemented, and to monitor the effectiveness of those measures.
11

12 OBLIGATIONS OF THE OPERATOR
13

14 The Operator shall have primary responsibility for monitoring Project compliance and
15 effectiveness of all protective measures included as "Provisions" in this Agreement. Protective
16 measures must be implemented within the time periods indicated in the Agreement and as
17 described below.
18

19 The Operator shall submit the following to the Department:
20

- 21 • Construction/work schedule (Provision 2)
- 22
- 23 • Survey results for sensitive species (Provision 8).
- 24
- 25 • If necessary, Preconstruction Survey results for nesting birds (Provision 15)
- 26
- 27 • Diversion and Dewatering Plan (Provision 18)
- 28
- 29 • Construction Period Erosion Prevention and Contingency Plan (Provision 23)
- 30
- 31 • Spill Response Plan (Provision 33)
- 32
- 33 • A Final Project Report submitted within 30 days after the Project is completed. The final
34 report shall summarize the Project construction, including any problems relating to the
35 protective measures of this Agreement. "Before and after" photo documentation of the
36 Project site shall be required.
37

38 In addition to the above monitoring and reporting requirements, the Department requires as part
39 of the MRP that the Operator:
40

- 41 • Immediately notify the Department in writing if monitoring reveals that any of the
42 protective measures were not implemented during the period indicated in this program, or
43 if it anticipates that measures will not be implemented within the time period specified.

- 1 • Immediately notify the Department if any of the protective measures are not providing the
2 level of protection that is appropriate for the impact that is occurring, and
3 recommendations, if any, for alternative protective measures.
4

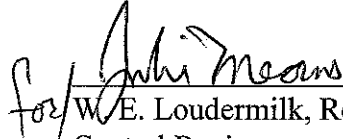
5 **VERIFICATION OF COMPLIANCE:**
6

7 The Department shall verify compliance with protective measures to ensure the accuracy of the
8 Operator's monitoring and reporting efforts. The Department may, at its sole discretion, review
9 relevant Project documents maintained by the Operator, interview the Operator's employees and
10 agents, inspect the Project area, and take other actions to assess compliance with or effectiveness
11 of protective measures for the Project.

1 **CONCURRENCE:**
2
3
4
5

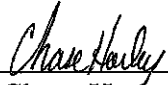
6 **APPROVED BY THE CALIFORNIA DEPARTMENT OF FISH AND GAME**

7
8 on 10-27, 2008.
9

10
11 
12 for W.E. Loudermilk, Regional Manager
13 Central Region
14
15
16
17

18 **ACKNOWLEDGMENT**
19

20 The undersigned acknowledges receipt of this Agreement and, by signing, accepts and agrees to
21 comply with all terms and conditions contained herein. The undersigned also acknowledges that
22 adequate funding shall be made available to implement the measures required by this Agreement.
23
24
25

26 By: 
27 Chase Hurley
28 General Manager
29 Henry Miller Reclamation District

Date: 10, 20.08

APPENDIX 2—Site Photographs

Boundary Drain



Boundary Drain



West Delta Drain



APPENDIX 3—Species List from U.S. Fish and Wildlife Service



United States Department of the Interior
FISH AND WILDLIFE SERVICE

Sacramento Fish and Wildlife Office
2800 Cottage Way, Room W-2605
Sacramento, California 95825



November 4, 2008

Document Number: 081104041440

Shauna McDonald
Bureau of Reclamation
1243 N St
Fresno, CA 93721

Subject: Species List for Species List for Henry Miller Reclamation District No. 2131 Boundary Drain and West Delta

Dear: Ms. McDonald

We are sending this official species list in response to your November 4, 2008 request for information about endangered and threatened species. The list covers the California counties and/or U.S. Geological Survey 7½ minute quad or quads you requested.

Our database was developed primarily to assist Federal agencies that are consulting with us. Therefore, our lists include all of the sensitive species that have been found in a certain area *and also ones that may be affected by projects in the area*. For example, a fish may be on the list for a quad if it lives somewhere downstream from that quad. Birds are included even if they only migrate through an area. In other words, we include all of the species we want people to consider when they do something that affects the environment.

Please read Important Information About Your Species List (below). It explains how we made the list and describes your responsibilities under the Endangered Species Act.

Our database is constantly updated as species are proposed, listed and delisted. If you address proposed and candidate species in your planning, this should not be a problem. However, we recommend that you get an updated list every 90 days. That would be February 02, 2009.

Please contact us if your project may affect endangered or threatened species or if you have any questions about the attached list or your responsibilities under the Endangered Species Act. A list of Endangered Species Program contacts can be found at www.fws.gov/sacramento/es/branches.htm.

Endangered Species Division



**Federal Endangered and Threatened Species that Occur in
or may be Affected by Projects in the Counties and/or
U.S.G.S. 7 1/2 Minute Quads you requested**

Document Number: 081104041440

Database Last Updated: January 31, 2008

Quad Lists

Listed Species

Invertebrates

Branchinecta conservatio

Conservancy fairy shrimp (E)

Critical habitat, Conservancy fairy shrimp (X)

Branchinecta longiantenna

Critical habitat, longhorn fairy shrimp (X)

longhorn fairy shrimp (E)

Branchinecta lynchi

Critical habitat, vernal pool fairy shrimp (X)

vernal pool fairy shrimp (T)

Desmocerus californicus dimorphus

valley elderberry longhorn beetle (T)

Lepidurus packardii

Critical habitat, vernal pool tadpole shrimp (X)

vernal pool tadpole shrimp (E)

Fish

Hypomesus transpacificus

delta smelt (T)

Oncorhynchus mykiss

Central Valley steelhead (T) (NMFS)

Amphibians

Ambystoma californiense

California tiger salamander, central population (T)

Rana aurora draytonii

California red-legged frog (T)

Reptiles

Gambelia (=Crotaphytus) sila

blunt-nosed leopard lizard (E)

Thamnophis gigas

giant garter snake (T)

Mammals

Dipodomys nigratoides exilis

Fresno kangaroo rat (E)

Vulpes macrotis mutica

San Joaquin kit fox (E)

Plants

Chamaesyce hooveri

Critical habitat, Hoover's spurge (X)

Quads Containing Listed, Proposed or Candidate Species:

SAN LUIS RANCH (403A)

LOS BANOS (403D)

County Lists

No county species lists requested.

Key:

- (E) *Endangered* - Listed as being in danger of extinction.
- (T) *Threatened* - Listed as likely to become endangered within the foreseeable future.
- (P) *Proposed* - Officially proposed in the Federal Register for listing as endangered or threatened.
- (NMFS) Species under the Jurisdiction of the [National Oceanic & Atmospheric Administration Fisheries Service](#). Consult with them directly about these species.
- Critical Habitat* - Area essential to the conservation of a species.
- (PX) *Proposed Critical Habitat* - The species is already listed. Critical habitat is being proposed for it.
- (C) *Candidate* - Candidate to become a proposed species.
- (V) Vacated by a court order. Not currently in effect. Being reviewed by the Service.
- (X) *Critical Habitat* designated for this species

Important Information About Your Species List

How We Make Species Lists

We store information about endangered and threatened species lists by U.S. Geological Survey 7½ minute quads. The United States is divided into these quads, which are about the size of San Francisco.

The animals on your species list are ones that occur within, **or may be affected by** projects within, the quads covered by the list.

- Fish and other aquatic species appear on your list if they are in the same watershed as your quad or if water use in your quad might affect them.
- Amphibians will be on the list for a quad or county if pesticides applied in that area may be carried to their habitat by air currents.
- Birds are shown regardless of whether they are resident or migratory. Relevant birds on the county list should be considered regardless of whether they appear on a quad list.

Plants

Any plants on your list are ones that have actually been observed in the area covered by the list. Plants may exist in an area without ever having been detected there. You can find out what's in the surrounding quads through the California Native Plant Society's online [Inventory of Rare and Endangered Plants](#).

Surveying

Some of the species on your list may not be affected by your project. A trained biologist or botanist, familiar with the habitat requirements of the species on your list, should determine whether they or habitats suitable for them may be affected by your project. We recommend that your surveys include any proposed and candidate species on your list.

For plant surveys, we recommend using the [Guidelines for Conducting and Reporting Botanical Inventories](#). The results of your surveys should be published in any environmental documents prepared for your project.

Your Responsibilities Under the Endangered Species Act

All animals identified as listed above are fully protected under the Endangered Species Act of 1973, as amended. Section 9 of the Act and its implementing regulations prohibit the take of a federally listed wildlife species. Take is defined by the Act as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect" any such animal.

Take may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or shelter (50 CFR §17.3).

Take incidental to an otherwise lawful activity may be authorized by one of two procedures:

- If a Federal agency is involved with the permitting, funding, or carrying out of a project that may result in take, then that agency must engage in a formal [consultation](#) with the Service.

During formal consultation, the Federal agency, the applicant and the Service work together to avoid or minimize the impact on listed species and their habitat. Such consultation would result in a biological opinion by the Service addressing the anticipated effect of the project on listed and proposed species. The opinion may authorize a limited level of incidental take.

- If no Federal agency is involved with the project, and federally listed species may be taken as part of the project, then you, the applicant, should apply for an incidental take permit. The Service may issue such a permit if you submit a satisfactory conservation plan for the species that would be affected by your project.

Should your survey determine that federally listed or proposed species occur in the area and are likely to be affected by the project, we recommend that you work with this office and the California Department of Fish and Game to develop a plan that minimizes the project's direct and indirect impacts to listed species and compensates for project-related loss of habitat. You should include the plan in any environmental documents you file.

Critical Habitat

When a species is listed as endangered or threatened, areas of habitat considered essential to its conservation may be designated as [critical habitat](#). These areas may require special management considerations or protection. They provide needed space for growth and normal behavior; food, water, air, light, other nutritional or physiological requirements; cover or shelter; and sites for breeding, reproduction, rearing of offspring, germination or seed dispersal.

Although critical habitat may be designated on private or State lands, activities on these lands are not restricted unless there is Federal involvement in the activities or direct harm to listed wildlife.

If any species has proposed or designated critical habitat within a quad, there will be a separate line for this on the species list. Boundary descriptions of the critical habitat may be found in the Federal Register. The information is also reprinted in the Code of Federal Regulations (50 CFR 17.95). See our [critical habitat page](#) for maps.

Candidate Species

We recommend that you address impacts to candidate species. We put plants and animals on our candidate list when we have enough scientific information to eventually propose them for listing as threatened or endangered. By considering these species early in your planning process you may be able to avoid the problems that could develop if one of these candidates was listed before the end of your project.

Species of Concern

The Sacramento Fish & Wildlife Office no longer maintains a list of species of concern. However, various other agencies and organizations maintain lists of at-risk species. These lists provide essential information for land management planning and conservation efforts.

[More info](#)

Wetlands

If your project will impact wetlands, riparian habitat, or other jurisdictional waters as defined by section 404 of the Clean Water Act and/or section 10 of the Rivers and Harbors Act, you will need to obtain a permit from the U.S. Army Corps of Engineers. Impacts to wetland habitats require site specific mitigation and monitoring. For questions regarding wetlands, please contact Mark Littlefield of this office at (916) 414-6580.

Updates

Our database is constantly updated as species are proposed, listed and delisted. If you address proposed and candidate species in your planning, this should not be a problem. However, we recommend that you get an updated list every 90 days. That would be February 02, 2009.

APPENDIX 4—Existing Permits for Aquatic Herbicide Use



Terry Tamminen
California
Environmental
Protection Agency

State Water Resources Control Board

Division of Water Quality
1001 I Street • Sacramento, California 95814 • (916) 341-5455
Mailing Address: P.O. Box 100 • Sacramento, California • 95812-0100
FAX (916) 341-5465 • Internet Address: <http://www.swrcb.ca.gov>



Arnold Schwarzenegger
Governor

ATTACHMENT A

NOTICE OF INTENT

TO COMPLY WITH THE TERMS OF
WATER QUALITY ORDER NO. 2004-0005-DWQ
STATEWIDE GENERAL NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT
FOR THE DISCHARGE OF AQUATIC PESTICIDES FOR AQUATIC WEED CONTROL
IN WATERS OF THE UNITED STATES
GENERAL PERMIT NO. CAG990005

I. NOTICE OF INTENT STATUS (see instructions)

MARK ONLY ONE ITEM A. ☒ New Applicator B. ☐ Change of Information for WDID#

II. CONTROL AGENCY INFORMATION

A. Name HENRY MILLER RECLAMATION DISTRICT #2131			
B. Mailing Address 11704 W. Henry Miller Avenue			
C. City Dos Palos	D. County Merced	E. State CA	F. Zip 93620
G. Contact Person John Paul Petroni		H. Title Maintenance Superintendent	I. Phone (209) 826-5112

III. RECEIVING WATER INFORMATION

A. Do wastes and pesticide residues discharge to (check all that apply):	
1. <input checked="" type="checkbox"/>	Canals, ditches, or other constructed conveyance facilities owned and controlled by Control Agency? Name of the conveyance system: <u>Henry Miller Reclamation District #2131</u>
2. <input type="checkbox"/>	Canals, ditches, or other constructed conveyance facilities owned and controlled by an entity other than the Control Agency Owner's name: _____ Name of the conveyance system: _____
3. <input type="checkbox"/>	Directly to river, lake, creek, stream, bay, ocean, etc.? Name of water body: _____
B. Regional Water Quality Control Board(s) where application sites are located (REGION 1, 2, 3, 4, 5, 6, 7, 8, or 9): REGION <u>#5F</u> (List all regions where pesticide application is proposed.)	

NOTICE OF INTENT
WATER QUALITY ORDER NO. 2004-0009-DWQ

IV. PESTICIDE APPLICATION INFORMATION

A. Target Organism: <u>Algae</u> <u>xx</u> Aquatic Weeds (surface) <u> </u> Aquatic Weeds (submerged) <u> </u> OTHER (identify): <u> </u>
B. Aquatic Pesticides Used: List Name and Active ingredients <u>Aqua Neat / Glyshosate EPA REG #228-365</u>
C. Period of Application: Start Date <u>10/01/04</u> End Date <u>12/31/04</u>
D. Types of Adjuvants Used: <u>R-11</u>

V. AQUATIC PESTICIDES APPLICATION PLAN

Has Aquatic Pesticides Application Plan been prepared and is the applicator familiar with its contents? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If not, when will it be prepared? <u> </u>
--

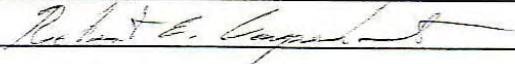
VI. NOTIFICATION

Have potentially affected public and governmental agencies been notified? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

VII. VICINITY MAP AND FEE

A. Have you included vicinity map(s) with this submittal? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> Separate vicinity maps must be submitted for each Region where a proposed discharge will occur.
B. Have you included payment of the filing fee (for first-time enrollees only) with this submittal? ... YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> NA <input type="checkbox"/>

VIII. CERTIFICATION

<p>"I certify under penalty of law that this document and all attachments were prepared under my direction and supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment. Additionally, I certify that the provisions of the permit, including developing and implementing a monitoring program, will be complied with."</p>	
A. Printed Name: <u>Robert E. Capehart</u>	
B. Signature: <u></u>	Date: <u>10/2/04</u>
C. Title: <u>Interm General Manager</u>	

MERCED COUNTY DEPARTMENT OF AGRICULTURE
2139 Wardrobe Ave., Merced, CA 95340-6495 (209)385-7431 NOI (209)723-5911
342 D Street, Los Banos, CA 93635 (209)827-2030 NOI (209)827-2031

RESTRICTED MATERIALS PERMIT
POSSESSION & USE
AG USE
SEASONAL

Permit #: 2401376
Valid as of: 2008-01-01
Expires on: 2008-12-31
Issue Date: 2007-12-17

Permittee
Grower 2401376
HENRY MILLER RECLAMATION DIST.2131
11704 W. HENRY MILLER RD.
DOS PALOS, CA 93620-
(209)826-5112

Contact Person
Qacs 013778
PETRONI, JOHN P
11940 W. HENRY MILLER AVE
DOS PALOS, CA 93620
(209)761-7223

Contact Address: 11704 W. HENRY MILLER, DP
HQ District: 10

I understand that this permit does not relieve me from liability for any damage to persons or property caused by the use of these pesticides. I waive any claim of liability or damages against the County Department of Agriculture based on the issuance of this permit. I further understand that permission to use restricted materials may be revoked when restricted materials are used in conflict with the manufacturer's labeling or in violation of applicable laws, regulations and specific conditions of this permit. I authorize inspection at all reasonable times and whenever an emergency exists, by the Department of Pesticide Regulation or the County Department of Agriculture of all areas treated or to be treated, storage facilities for pesticides or emptied containers and equipment used or to be used in the treatment.

Permit Applicant: J.P. PETRONI

Sign: [Signature]

Title: [Signature]

Date: 12/17/07

Issuing Officer: [Signature]

Date: 12/17/07

Permit Conditions

1. For Restricted Material Use, an NOI is required 24 hours before application. Method: Phone, Drop Box, in person, web or fax.
2. I have considered alternatives and mitigation measures pursuant to Title 3, California Code of Regulations, section 6426. Taking into account economic, environmental, social, and technological factors, I have adopted those that are feasible and would substantially lessen any significant adverse impact on the environment.

Permit Materials

Code	Name	Form	Application Method	By	Pest
6360	2,4-D	ALL REG	O	GP	weeds
2310	DIURON	ALL REG	G	PG	weeds

RESTRICTED MATERIALS PERMIT
HENRY MILLER RECLAMATION DIST. 2131

Page 2
Permit #: 2401376

Permit Sites

Site Id	Description Commodity	Code	Grid Planted	Map Field District Pesticide Codes
001	VARIOUS		m 10s-12e-06	1 001 10
	DITCH BANK	6502100	10000.00 A	6360, 2310

Permit Contacts

Dealers 1155800001 BRITZ FERTILIZERS, FIREBAUGH
Pcas 001738 MORAN, MIGUEL A.

*Permit
1155800001
Pcas 001738
MORAN, MIGUEL A.*

*Mark for
signature*

APPENDIX 5—Information on Los Banos Wildlife Management Area

CHAPTER IV I

Los Banos Wildlife Management Area Alternative Plans



***U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
MID-PACIFIC REGION***

CHAPTER IV I

LOS BANOS WILDLIFE MANAGEMENT AREA

Los Banos Wildlife Management Area (Refuge) was purchased in 1929 and originally called the Los Banos State Game Refuge. The 5,586 acre refuge was the first in a series of waterfowl refuges established throughout California. The DFG manages the Refuge which is located approximately four miles northeast of the City of Los Banos. The Refuge is centrally located in the San Joaquin River floodplain and is included within the Grassland Resource Conservation District (GRCD), as discussed in Chapter IV G. The management of the Refuge is oriented toward the maintenance of native marsh habitat (USBR, 1986a).

A. WATER RESOURCES

The Refuge receives 6,200 acre-feet of CVP water through an exchange contract for water rights lost from the San Joaquin River. The Grassland Water District (GWD) delivers 2,200 acre-feet of firm water. The Refuge also receives 4000 acre-feet of CVP water through the San Luis Canal Company (SLCC). This water cannot be supplied when the Mendota Pool is dewatered for periodic maintenance.

The Refuge also can obtain up to 6,500 acre-feet of agricultural return flows when available in the GWD Boundary Drain. Water from the GWD Boundary Drain is of poorer quality than the CVP water supplies due to high salt content. Selenium has not been identified at high concentrations in the Boundary Drain.

The Refuge also has 2,000 acre-feet of riparian water rights on Mud Slough. Mud Slough is a natural drain that flows through the area joining the GWD Boundary Drain at the middle of the Refuge. At times, the Mud Slough has high flows and could be used to create ponds through the western sections of the Refuge. However, recent studies have shown high selenium levels in Mud Slough. Therefore, this water would not be used on the Refuge until the water quality improves (DFG, 1987d).

The Refuge purchased additional land in October 1987 and January 1988. Through these purchases, the Refuge obtained water rights on Salt Slough for 18 and 20 cfs. The Refuge also obtained a water contract through these purchases for 15 cfs of Salt Slough water. However, Salt Slough has unusable agricultural return flows north of the junction with Mud Slough. Because of the water contamination, water deliveries under the contracts only can be made during a limited period of time.

1. Surface Waters

The GWD delivers the 2,200 acre-feet of water in the winter through the SLCC San Luis Canal, shown in Figure IV I-1.

Approximately 1,400 acre-feet of water is delivered between September 15 and November 1. The remaining 800 acre-feet is delivered between November 1 and December 31.

In the past, the SLCC San Luis Canal was used to convey poor quality agricultural return water. However, the Porter-Blake Bypass which was recently constructed, as described in Chapter IV G, allows freshwater deliveries to be made via the SLCC San Luis Canal into the Refuge.

In addition, SLCC delivers 4,000 acre-feet of exchange water through the SLCC San Pedro and West Delta Canals.

2. Water Conveyance Facilities

The main source of water to the west side of the Refuge is the San Luis Canal. Water is diverted at several points along the western boundary of the Refuge to supply the lakes and marsh areas west of Mud Slough. This system provides an adequate means for water delivery to the west side provided the water delivered is of acceptable quality.

The eastern area of the Refuge is served through the SLCC San Pedro and West Delta Canals and the GWD Boundary Drain. The water supply for the San Pedro and West Delta Canal is the SLCC Arroyo Canal which receives usable agricultural return flows from GWD. The San Pedro Canal can deliver 15 to 20 cfs, and the West Delta Canal can deliver approximately 10 cfs. The capacity of these facilities are less than required for maximum month flows. In addition, these 50-year old systems require extensive maintenance to maintain maximum capacity (DFG, 1987d).

The GWD Boundary Drain is a deep agricultural drain which enters the Refuge from the southeast. This is the primary water source for the east-central portion of the Refuge. The water is lifted by 20 cfs low-lift pumps and conveyed through a pipe across private land to the eastern area of the Refuge. At one time, water from the GWD Boundary Drain and Mud Slough was lifted into Ruth Lakes at the north end of Lower Ruth Lake. The water was then lifted from the lakes to supply water to the southeast area of the Refuge. However, SLCC has dredged the GWD Boundary Drain and Mud Slough system three feet deeper than the original depth, and removed all structures in the ditch. Therefore, water cannot always be backed up for diversion by the low-lift pumps (DFG, 1987d).

3. Groundwater

Groundwater levels are generally within 25 feet of the land surface. The Refuge has similar geologic conditions to the GRCD, as described in Chapter IV G of this report.

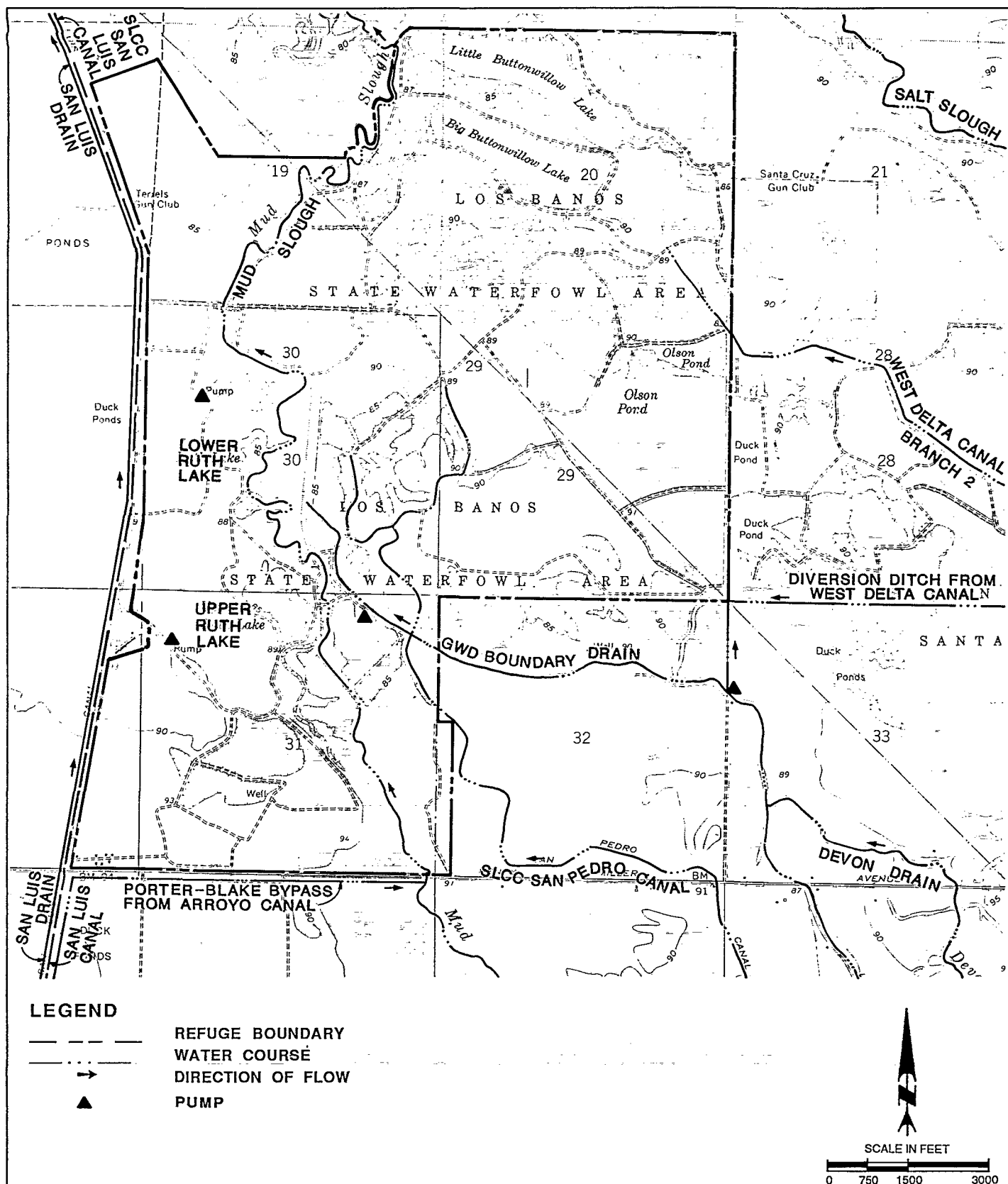


FIGURE IV I-1

LOS BANOS WILDLIFE MANAGEMENT AREA
EXISTING WATER SUPPLY FACILITIES

JMM

In 1981, a small dam was removed from the GWD Boundary Drain which caused the groundwater level to drop due to decreased seepage. This lowering of the water level resulted in an increase in refuge water requirements (USBR, 1986a).

Historically the Refuge has used five wells. High power costs, well cave-ins, and poor water quality due to high boron content have caused the groundwater system to be abandoned. The Reclamation estimates that the safe yield of the Refuge is 6,800 acre-feet (USBR, 1986c).

B. FORMULATION AND EVALUATION OF ALTERNATIVE PLANS

The DFG estimates that 50,000 acre-feet of water would be required for full development and optimum management of the entire Refuge. For the purposes of assessing the impacts of water delivery alternatives, four levels of water supply have been identified, as presented in Table IV I-1. Each of the water supply levels provides a different volume of water, and are summarized as follows:

Level 1 - Existing firm water supply

Level 2 - Current average annual water deliveries

Level 3 - Water supply needed for full use of existing development

Level 4 - Water delivery needed for optimum management

1. Delivery Alternative for Level 1 (No Action Alternative) (6,200 acre-feet)

No new facilities would be required to deliver the existing firm water supply. However to ensure that good quality water is provided to the Refuge through the SLCC San Luis Canal, the Zahm-Sansoni-Nelson Plan would need to be implemented. The Zahm-Sansoni-Nelson Plan was described in Chapter IV G.

2. Delivery Alternatives for Level 2 (16,700 acre-feet)

Alternative 2A was developed to provide an additional diversion point and conveyance facilities for the southeastern portion of the Refuge. Alternative 2B would provide a conjunctive use program for the Refuge. Both of these alternatives assume that the Zahm-Sansoni-Nelson Plan would be implemented to provide good quality water to the Refuge.

Alternative 2A - Reconstruct San Luis Canal Company Facilities. An abandoned diversion ditch was used to convey water from the SLCC West Delta Canal to the southeast corner of the Refuge. Under this alternative, this 7,500-foot canal would be reconstructed, as shown

TABLE IV I-1
DEPENDABLE WATER SUPPLY NEEDS
ALTERNATIVE SUPPLY LEVELS FOR THE LOS BANOS WMA

Month	<u>Supply Level 1</u> ac-ft	<u>Supply Level 2</u> ac-ft	<u>Supply Level 3</u> ac-ft	<u>Supply Level 4</u> ac-ft
January	200	500	500	500
February	0	500	500	500
March	0	1,000	1,000	1,500
April	0	1,000	1,000	1,500
May	700	2,000	3,000	3,000
June	500	1,500	4,000	4,000
July	0	1,500	3,000	3,000
August	0	1,670	2,000	2,500
September	1,500	2,000	2,000	2,500
October	2,000	3,000	3,000	3,000
November	1,000	1,500	1,500	2,000
December	300	500	1,000	1,000
Total	6,200	16,670	22,500	25,000

Notes:

Supply Level 1: Existing firm water supply
Supply Level 2: Current average annual water deliveries
Supply Level 3: Full use of existing development
Supply Level 4: Optimum mangement

Source: USBR, 1986a; CDFG, 1986c; USFWS, 1986g

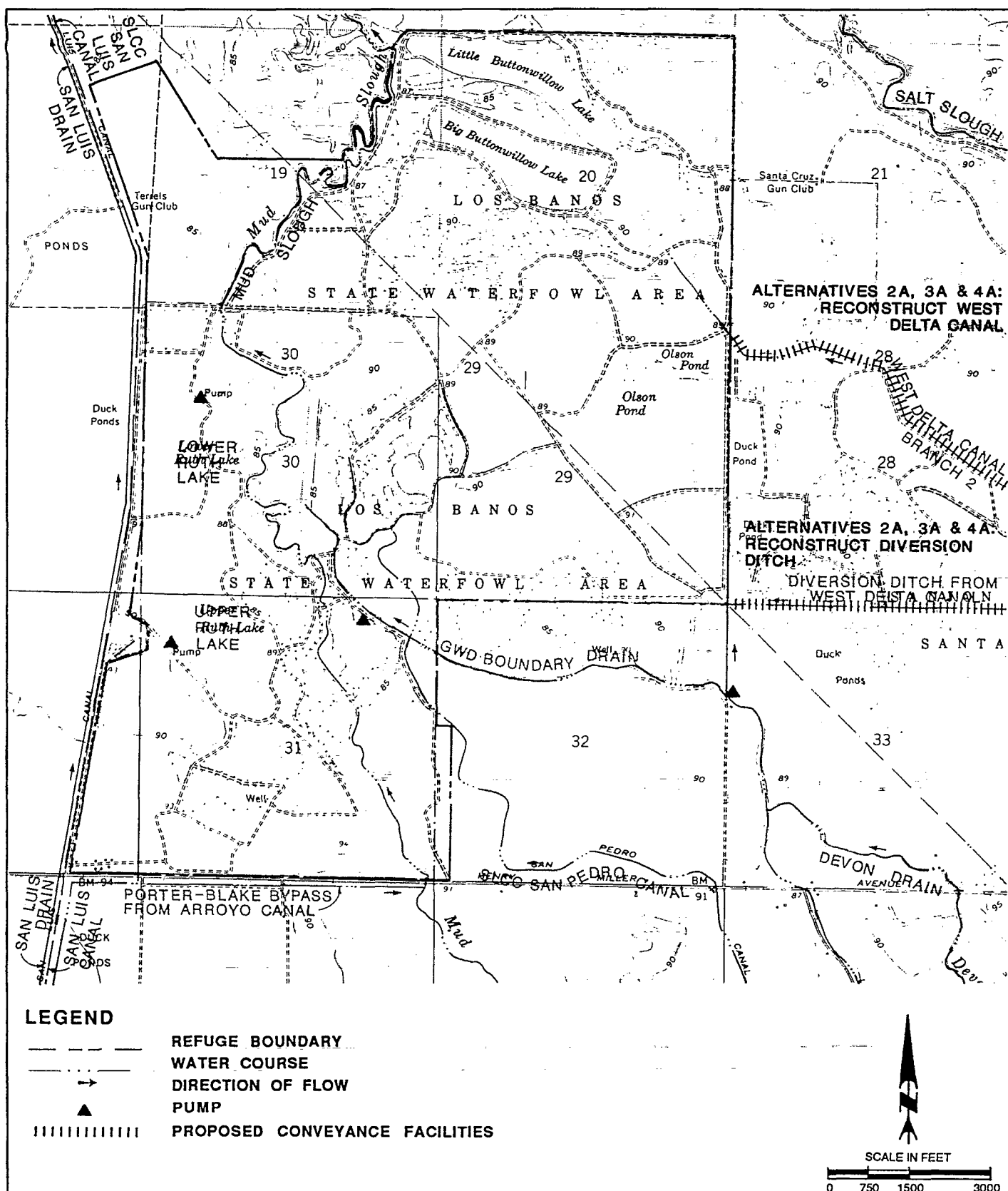


FIGURE IV I-2

LOS BANOS WILDLIFE MANAGEMENT AREA
ALTERNATIVE WATER SUPPLY FACILITIES

JMM

in Figure IV I-2. Portions of the the West Delta Canal also would be rehabilitated to reduce maintenance, increase capacity, and improve reliability.

Alternative 2B - Implement a Conjunctive Use Program. Eight wells would be constructed on the Refuge to deliver the maximum month water demand. The exact locations of the wells would be determined in a future study. The wells would be developed as part of a conjunctive use program. During dry years, water demands would be supplied by wells, as discussed in Chapter III. During wet years, the wells would probably not be needed if CVP water is provided. Adequate surface water would need to be provided when groundwater is used to dilute the boron concentrations. Implementation of this alternative also would require implementation of Alternative 2A and the Zahm-Sansoni-Nelson Plan.

3. Delivery Alternatives for Level 3 (22,500 acre-feet)

The alternatives considered for Water Level 3 are similar to those considered for Water Level 2.

Alternative 3A - Reconstruct San Luis Canal Company Facilities. This alternative is identical to Alternative 2A.

Alternative 3B - Implement a Conjunctive Use Program. This alternative would be similar to Alternative 2B, except that 13 wells would be constructed on the Refuge. The exact locations of the wells would be determined in a future study. Implementation of this alternative also would require implementation of Alternative 3A and the Zahm-Sansoni-Nelson Plan.

4. Delivery Alternatives for Level 4 (25,000 acre-feet)

The alternatives considered for Water Level 4 are similar to those considered for Water Level 2.

Alternative 4A - Reconstruct San Luis Canal Company Facilities. This alternative is identical to Alternative 2A.

Alternative 4B - Implement a Conjunctive Use Program. This alternative would be similar to Alternative 2B, except that 13 wells would be constructed on the Refuge. The exact locations of the wells would be determined in a future study. Implementation of this alternative also would require implementation of Alternative 4A and the Zahm-Sansoni-Nelson Plan.

5. Summary of Alternatives

The beneficial and adverse effects of each alternative were compared with respect to the criteria listed in Chapter III.

There are no alternatives for Level 1; however to ensure that good quality water is provided, the Zahm-Sansoni-Nelson Plan described in Chapter IV G would need to be implemented.

Alternatives 2A, 3A, and 4A would improve operations and decrease maintenance of existing facilities, as well as increasing operational flexibility.

Alternatives 2B, 3B, and 4B would provide a conjunctive use program. Implementation of a conjunctive use program would result in a groundwater overdraft because the amount of water needed during dry years will exceed the safe yield of the Refuge. During dry years when groundwater is used, adequate surface water is needed to dilute the boron concentrations. These alternatives would require implementation of Alternatives 2A, 3A, and 4A to deliver surface water during the wet years.

C. COSTS AND ECONOMIC ANALYSIS

Costs for the alternative plans to provide adequate water supplies under Water Supply Levels 2, 3, and 4 are presented in Table IV I-2. The construction costs include factors to cover engineering, contingencies, and overhead. Annual operation and maintenance (O&M) costs include only the local costs of delivering water. The annual O&M costs do not include costs to purchase CVP water. During the advanced planning phase, these costs will be refined further.

Construction of the facilities under all of the alternatives would result in additional money being spent in Merced County during construction. The construction could be completed within one summer season by construction workers who reside in Merced, Madera or Fresno County.

Currently (Level 2), the annual public use at the Refuge is about 34,400 visits per year. If additional water is provided, the attendance levels would increase. If the water supply is decreased to Level 1, public use would decrease significantly.

D. WILDLIFE RESOURCES

The annual bird use in the Refuge is approximately 23,768,000 use-days. Wildlife and fishery resources associated with the Refuge are presented in Table IV I-3. There are no listed threatened or endangered species at the Refuge. Numerous candidate species may occur in this area and are summarized in Table IV I-4.

The alternative plans would provide additional water to improve habitat in the Refuge. The improved habitat would increase the number of wildlife-use days and recreational benefits as presented in Table IV I-5.

TABLE IV I-2
SUMMARY OF ESTIMATED COSTS OF ALTERNATIVES
LOS BANOS WMA

Items	Alternatives					
	2A	2B	3A	3B	4A	4B
Additional Water (ac-ft)	10,500	10,500	16,300	16,300	18,800	18,800
Construction Costs						
Wells	\$ --	\$424,000 ^(b)	\$ --	\$689,000 ^(d)	\$ --	\$689,000 ^(d)
Pipelines/Canals	15,300 ^(a)	--	15,300 ^(a)	--	15,300 ^(a)	--
Subtotal	\$ 15,300	\$424,000	\$ 15,300	\$689,000	\$ 15,300	\$689,000
Other Costs	--	15,300 ^(c)	--	15,300 ^(c)	--	15,300
Total (e)	\$ 15,300	\$439,300	\$ 15,300	\$704,300	\$ 15,300	\$704,300
Annualized Construction Cost (8.87%, 30 yrs)	\$ 1,480	\$ 42,260	\$ 1,480	\$ 67,760	\$ 1,480	\$ 67,760
Additional Annual Cost						
Operation & Maintenance ^(f)	\$ 1,000	\$ 14,400	\$ 1,000	\$ 23,400	\$ 1,000	\$ 23,400
Power	--	48,570 ^(g,h)	--	75,390 ^(g,h)	--	86,950 ^(g,h)
Local Conveyance Cost ⁽ⁱ⁾	105,000	--	163,000	--	188,000	--
Subtotal	\$106,000	\$ 62,970	\$164,000	\$ 98,790	\$189,000	\$110,350
Other Costs	--	53,000 ^(c,h)	--	82,000 ^(c,h)	--	94,500 ^(c,h)
Total (e)	\$106,000	\$115,970	\$164,000	\$180,790	\$189,000	\$204,850
Total Annual Costs	\$107,480	\$158,230	\$165,480	\$248,550	\$190,480	\$272,610
Cost/Additional Acre-Foot	\$ 7.00	\$ 15.10	\$ 10.20	\$ 15.30	\$ 10.20	\$ 14.50

TABLE IV I-2
SUMMARY OF ESTIMATED COSTS OF ALTERNATIVES
LOS BANOS WMA
(Continued)

Notes: Alternatives 2A, 3A, and 4A - Reconstruct San Luis Canal Company Facilities.
Alternatives 2B, 3B, and 4B - Implement a Conjunctive Use Plan.

- (a) Reconstruct 7,500 feet of unlined canal and portions of West Canal.
- (b) 8 wells, 500 feet deep, 80-foot lift.
- (c) Alternative 2B would require implementation of Alternative 2A, Alternative 3B would require implementation of Alternative 3A, and Alternative 4B would require implementation of Alternative 4A.
- (d) 13 wells, 500 feet deep, 80-foot lift.
- (e) Does not include cost for Zahm-Sansoni-Nelson Plan which is discussed in Chapter IVG.
- (f) Basis for O&M costs are discussed in Appendix F.
- (g) Unit Pumping Cost = \$9.25/af.
- (h) Values multiplied by 0.5 because facilities are assumed to be used only 5 out of 10 years.
- (i) Unit Conveyance Cost = \$10/af.

TABLE IV I-3
FISH AND WILDLIFE RESOURCES
LOS BANOS WMA

Ducks

Pintail(a)
 Gadwall(a)
 Ring-necked Duck

Mallard(a)
 Shoveler(a)
 Canvasback

Green-winged Teal
 Cinnamon Teal(a)
 Ruddy Duck(a)
 Widgeon

Geese and Swans

Ross' Goose
 Snow Goose

Cackling Goose
 Tundra Swan

White-fronted Goose

Coots

American Coot(a)

Shore and Wading Birds

Pied-billed Grebe
 White-faced Ibis
 Lesser Sandhill Crane
 Common Snipe
 Long-billed Curlew
 Great Blue Heron
 Common Egret

Snowy Egret
 American Bittern
 Black-crowned Night Herons
 American Avocet
 Black-necked Stilt(a)
 Dowitchers

Great Yellowlegs
 Sandpiper
 Killdeer(a)
 Rail(a)
 Sora(a)
 Gallinule(a)

Upland Game

Ring-necked Pheasant(a)
 Cottontail Rabbits

Black-tailed Jackrabbits
 Dove

TABLE IV I-3
FISH AND WILDLIFE RESOURCES

LOS BANOS WMA
(Continued)

Raptorial Birds		
Northern Harrier ^(a) Black-Shouldered Kite ^(a) Sparrow Hawk ^(a)	Red-tailed Hawk ^(a) Cooper's Hawk Golden Eagle	American Kestrel Turkey Vulture
Fish		
Brown Bullhead Carp	Channel Catfish Large Mouth Bass	Striped Bass
Furbearers		
Coyotes Opossum Beaver Spotted Skunk	Muskrats Striped Skunk Mink	Raccoon Grey Fox Badger

Notes:

(a) Birds nesting on refuge

Source: Environmental Assessment Reports, Los Banos Wildlife Area, and Refuge records

TABLE IV I-4

FEDERAL LISTED, PROPOSED, & CANDIDATE, THREATENED & ENDANGERED SPECIES

LOS BANOS WMA

Listed Species

Mammals

San Joaquin kit fox, Vulpes macrotis mutica (E)

Birds

Bald eagle, Haliaeetus leucocephalus (E)

American peregrine falcon, Falco peregrinus anatum (E)

Aleutian Canada goose, Branta canadensis leucopareia (E)

Invertebrates

Valley elderberry longhorn beetle, Desmocerus californicus dimorphus (T)

Proposed Species

None

Candidate Species

Birds

Swainson's hawk, Buteo swainsoni (2)

White-faced ibis, Plegadis chihi (2)

Western snowy plover, Charadrius alexandrinus nivosus (2)

Tricolored blackbird, Agelaius tricolor (2)

Reptiles

Giant garter snake, Thamnophis couchi gigas (2)

California tiger salamander, Ambystoma tigrinum californiense (2)

Invertebrates

Molestan blister beetle, Lytta molesta (2)

Plants

Hispid bird's-beak, Cordylanthus mollis subsp. hispidus (2)

Delta coyote-thistle, Eryngium racemosum (1)

Bearded allocarya, Plagiobothrys hystriculus (2)

Valley spearscale, Atriplex patula subsp. spicata (2)

Source: USFWS, June 4, 1987

(E)—Endangered

(T)—Threatened

(CH)—Critical Habitat

(1)—Category 1: Taxa for which the Fish and Wildlife Service has sufficient biological information to support a proposal to list as endangered or threatened.

(2)—Category 2: Taxa for which existing information indicated may warrant listing, but for which substantial biological information to support a proposed rule is lacking.

TABLE IV I-5
WILDLIFE RECREATIONAL BENEFITS AND RESOURCE IMPACTS
LOS BANOS WMA

		No Action Alternative	Alternatives				
			2A	2B	3A	3B	4A
Habitat Acres							
Permanent Water	100	484	484	484	484	600	600
Watergrass	--	500	500	700	700	850	850
Aquatics	--	--	--	200	200	300	300
Native Marsh	--	1,500	1,500	1,200	1,200	1,000	1,000
Un-irrigated Native Marsh	1,000	--	--	--	--	--	--
Uplands	2,108	724	724	624	624	458	458
Bird Use Days							
Coots	200,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000
Ducks	4,000,000	12,000,000	12,000,000	12,000,000	12,000,000	14,500,000	14,500,000
Geese	1,000,000	2,500,000	2,500,000	2,500,000	2,500,000	2,500,000	2,500,000
Cranes	1,000	18,000	18,000	19,000	19,000	19,000	19,000
Wading Birds	80,000	250,000	250,000	300,000	300,000	350,000	350,000
Shorebirds	2,000,000	8,000,000	8,000,000	8,500,000	8,500,000	8,500,000	8,500,000
Total	7,281,000	23,768,000	23,768,000	24,319,000	24,319,000	26,869,000	26,869,000
Public Use Days							
Consumptive	2,200	3,400	3,400	3,800	3,800	4,200	4,200
Non-Consumptive	11,600	31,000	31,000	33,000	33,000	35,000	35,000
Total	13,800	34,400	34,400	36,800	36,800	39,200	39,200
Total Annual Cost	\$ --	\$ 116,480	\$ 162,730	\$ 165,480	\$ 248,550	\$ 190,480	\$ 272,610
Incremental Cost/Additional 1000 Bird Use Days	N/A	\$ 7.10	\$ 9.90	\$ 9.70	14.60	\$ 9.70	\$ 13.90
Incremental Cost/Additional Public Use Day	N/A	\$ 5.70	\$ 7.90	\$ 7.20	\$ 10.80	\$ 7.50	\$ 10.70

Notes: Alternatives 2A, 3A, and 4A - Reconstruct San Luis Canal Company Facilities.
 Alternatives 2B, 3B, and 4B - Implement a Conjunctive Use Plan.

C-068277

Implementation of any of the alternative plans probably would not adversely affect the candidate threatened and endangered species. Detailed field investigations would be necessary during the advanced planning phase of the project. Implementation of a plan would result in overall beneficial environmental effects. The No Action Alternative would result in loss of marsh habitat. Additional regional environmental analyses would be completed as part of the Water Contracting EIS's.

E. SOCIAL ANALYSIS

The social consequences of constructing and operating the alternatives would be positive due to the potential increase in wildlife use and subsequently public use.

F. POWER ANALYSIS

The Pacific Gas and Electric serves the Refuge under the PA-1 rate schedule for agricultural users. A facility must be an authorized function of the CVP to receive project-use power. The authority to deliver CVP project-use power to the Refuge is currently being examined and will be detailed in the Refuge Water Supply Planning Report. A more detailed discussion of project-use power and wheeling agreements is provided in the Power Analysis section of Chapter II.

G. PERMITS

Construction under any of the alternatives would require several permits. Merced County would issue approvals for construction along roads and drainage courses to ensure that the existing drainage facilities would not be adversely affected. In addition, Merced County would issue permits for wells. Stream Alteration Permits would be required from the DFG for Alternatives 2A, 3A, and 4A. An Army Corps of Engineers permit would be required for construction activities in wetlands or riparian corridors under Alternatives 2A, 3A, and 4A.

APPENDIX 6—Water Quality Certification



Linda S. Adams
*Secretary for
Environmental Protection*

State Water Resources Control Board

Executive Office

Tam M. Doduc, Board Chair
1001 I Street • Sacramento, California 95814 • (916) 341-5615
Mailing Address: P.O. Box 100 • Sacramento, California • 95812-0100
Fax (916) 341-5621 • <http://www.waterboards.ca.gov>



Arnold Schwarzenegger
Governor

MAY 1 2007

Mr. Michael S. Jewell, Chief
Regulatory Branch
U.S. Army Corps of Engineers
1325 J Street, Room 1480
Sacramento, CA 95814-2922

Dear Mr. Jewell:

CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION OF NATIONWIDE PERMITS

In your letter of March 14, 2007, you requested that the State Water Resources Control Board (State Water Board) review the newly issued Nationwide Permits (NWP) and determine whether to certify, certify with conditions, or deny Clean Water Act section 401 Water Quality Certification (certification). The State certification decision is required within 60 days according to federal regulations which, in this case, is May 11, 2007.

For this action, the State Water Board is Lead Agency for the purposes of the California Environmental Quality Act (CEQA) and is required to analyze the environmental impacts and make a determination for each NWP. In considering this task and the timeframe allowed, the State Water Board elects to issue certifications for those NWPs covering activities that are categorically exempt from CEQA.

As authorized by the State Water Board, I therefore have issued certifications for 14 of the 49 NWPs on this basis. The enclosed certification identifies those NWPs and the associated conditions. I request that you notify the State Water Board if any of these conditions do not meet your regulations at 33 Code of Federal Regulations Part 325.4. In addition, the U.S. Army Corps of Engineers has the right to petition the State Water Board for review of this certification in accordance with 23 California Code of Regulations section 3867 *et seq.*

California Environmental Protection Agency

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If you would like to discuss these matters further, please contact Valerie Connor, Manager of the Regulatory Section, Division of Water Quality, at (916) 341-5573 (vconnor@waterboards.ca.gov), or Darrin Polhemus, Deputy Director, Division of Water Quality, at (916) 341-5458 (dpolhemus@waterboards.ca.gov).

Sincerely,



Dorothy Rice
Executive Director

Enclosure

cc: Ms. Cindy Tuck
Assistant Secretary for Policy
California Environmental Protection Agency
1001 I Street, 25th Floor
Sacramento, CA 95814

Mr. Chris Potter
Wetland Coordinator
Resources Agency
1416 Ninth Street
Sacramento, CA 95814

Mr. Larry Week, Chief
Watershed Restoration Branch
Department of Fish and Game
1416 Ninth Street, 12th Floor
Sacramento, CA 95814

Ms. Jane Hicks, Chief
Regulatory Section
San Francisco District
U.S. Army Corps of Engineers
333 Market Street
San Francisco, CA 94105-2197

California Environmental Protection Agency

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cc: Mr. Dave Castanon, Chief
Regulatory Section
Los Angeles District
U.S. Army Corps of Engineers
300 North Los Angeles Street, Room 6062
Los Angeles, CA 90012

Mr. Wade Eackle
Regulatory Program Manager
South Pacific Division
U.S. Army Corps of Engineers
1455 Market Street
San Francisco, CA 94103-1398

Mr. David Smith, Chief
Wetlands Regulatory Office
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Ms. Diane K. Noda
Field Supervisor
U.S. Fish & Wildlife Service
2493 Portola Road, Suite B
Ventura, CA 93003

Ms. Susan Moore
Field Supervisor
U.S. Fish and Wildlife Service
2800 Cottage Way, Room W-2605
Sacramento, CA 95825-1846

Mr. Jim Bartel
Field Supervisor
U.S. Fish and Wildlife Service
6010 Hidden Valley Rd
Carlsbad, CA 92011

Ms. April Evans, ES Secretary
California/Nevada Operations Office
U.S. Fish & Wildlife Service
2800 Cottage Way, RM W2606
Sacramento, CA 95825-1846

cc: Mr. Russ M. Strach
Assistant Regional Administrator
NOAA National Marine Fisheries Service
501 West Ocean Blvd.
Ventura, CA 90802-4213

Regional Water Board Executive Officers

**STATE WATER RESOURCES CONTROL BOARD
GENERAL 401 WATER QUALITY CERTIFICATION ORDER OF
U.S. ARMY CORPS OF ENGINEERS NATIONWIDE PERMITS**

Pursuant to Title 23, Section 3838 of the California Code of Regulations, the Executive Director does hereby make the following Clean Water Act (CWA) Section 401 Water Quality Certification (certification) determination for the U.S. Army Corps of Engineers' (ACOE) Nationwide Permits (NWP) which became effective on March 19, 2007 and will expire on March 18, 2012:

A. Certification:

Commencing on May 11, 2007, 14 NWPs, listed in Table A, are hereby granted certification subject to the Conditions and the Notification Requirements described below. The activities authorized by these 14 NWPs are exempted from the California Environmental Quality Act (CEQA) review since their activities are not expected to result in more than minimal individual or cumulative environmental impacts.

TABLE A – Certified Nationwide Permits

NWP No.	NATIONWIDE PERMIT DESCRIPTION	Decision
1	Aids to Navigation	Certify subject to Conditions 1 to 10
4	Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities	Certify subject to Conditions 1 to 10
5	Scientific Measurement Devices	Certify subject to Conditions 1 to 10 and Notification Requirements
6	Survey Activities	Certify subject to Conditions 1 to 10 and Notification Requirements
9	Structures in Fleeting and Anchorage Areas	Certify subject to Conditions
10	Mooring Buoys	Certify subject to Conditions
11	Temporary Recreational Structures	Certify subject to Conditions 1 to 10 and Notification Requirements
20	Oil Spill Cleanup	Certify subject to Conditions 1 to 10 and Notification Requirements

TABLE A – Certified Nationwide Permits (Continued)

NWP No.	NATIONWIDE PERMIT DESCRIPTION	Decision
22	Removal of Vessels	Certify subject to Conditions 1 to 10
24	Indian Tribe or State Administered Section 404 Programs	Certify
28	Modification of Existing Marinas	Certify subject to Conditions 1 to 10 and Notification Requirements
32	Completed Enforcement Actions	Certify subject to Conditions 1 to 10 and Notification Requirements
34	Cranberry Production Activities	Certify subject to Conditions 1 to 10 and Notification Requirements
38	Cleanup of Hazardous and Toxic Waste	Certify subject to Conditions 1 to 10 and Notification Requirements

CONDITIONS:

- Porter-Cologne Water Quality Control Act:** All permitted activities shall comply with all requirements of California's *Porter-Cologne Water Quality Control Act*.
- Non-Severability:** If any conditions are found to be invalid or unenforceable, certification for all activities to which that condition applies is denied.
- Water Diversion and Use:** Certification is denied for any activity involving a new or modified diversion or impoundment of water, unless the State Water Board has already approved a water rights permit, or such diversion or impoundment is solely for the purpose of drainage or flood control.
- Other Federal Permits and Licenses:** Certification is denied for any activity requiring the issuance or renewal of more than one federal permit or license.
- Hydroelectric Facilities Requiring a Federal Energy Regulatory Commission (FERC) License:** This certification action is not intended to apply, and shall not be construed to apply, to any discharge from any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license.
- Endangered Species Act:** Certification is denied for any project that would result in the taking of any candidate, threatened, or endangered species or the violation of the federal or California Endangered Species Acts.

7. **Hazardous Waste Sites:** Certification is denied for any project located on a site which is included on any list compiled pursuant to section 65962.5 of the Government Code.
8. **Subject to Review:** This certification is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to §13320 of the California Water Code and Title 23 California Code of Regulations §3867 et seq.
9. **Payment of Fees.** Certification is conditioned upon total payment of any fee required pursuant to Title 23 of the California Code of Regulations and owed by the applicant.
10. **Enforcement:**
 - a) In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process, or sanctions as provided for under state law. For purposes of §401(d) of the CWA, the applicability of any state law authorizing remedies, penalties, process, or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification.
 - b) In response to a suspected violation of any condition of this certification, the State Water Board may require the holder of any permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the State Water Board deems appropriate, provided that the burden, including cost, of the reports shall be a reasonable relationship to the need for the reports and the benefits to be obtained from the report.
 - c) In response to any violation of the conditions of this certification, the State Water Board may add to or modify the conditions of this certification as appropriate to ensure compliance.

NOTIFICATION:

Permittees proceeding under the 14 state-certified NWP's are required to provide notification of the proposed activity to the State Water Board and the appropriate Regional Water Quality Control Board (Regional Water Board) as specified in Table A and below.

Notification Requirements:

Not later than 21 days prior to commencing work on the proposed activity, the applicant must submit to the appropriate Regional Water Board and the State Water Board a notification containing at a minimum the information listed below. If a "Notification" is

required as part of ACOE section 404 permit, a copy of the notification to ACOE can be used instead. To avoid project delays, the applicant should submit the notification as early as possible. If the applicant is not notified by the Regional Water Board within 30 days of the postmarked date of the notification, the applicant may assume that the project meets the conditions of certification and may proceed with the project.

A. Contents of Notification:

(a) The name, address, and telephone number of:

- 1) the applicant, and
- 2) the applicant's agent (if an agent is submitting the notification).

(b) A full, technically accurate description, including the purpose and final goal, of the entire activity.

(c) Complete identification of all federal licenses/permits being sought for or applying to the proposed activity, including the:

- 1) federal agency;
- 2) type (e. g., Nationwide Permit Number); and
- 3) file number(s) assigned by the federal agency(ies), if available.

(d) Complete copies of either:

- 1) the application(s) for federal license(s)/permit(s) being sought for the activity, or
- 2) if no federal applications are required, any notification(s) concerning the proposed activity issued by the federal agency(ies), or
- 3) if no federal notification is issued, any correspondence between the applicant and the federal agency(ies) describing or discussing the proposed activity.

If no application, notification, correspondence, or other document must be exchanged between the applicant and federal agency(ies) prior to the start of the activity, the notification to the State Water Board and appropriate Regional Water Board shall include a written statement to this effect.

(e) Copies of any final and signed federal, state, and local licenses, permits, and agreements (or copies of the draft documents, if not finalized) that will be required for any construction, operation, maintenance, or other actions associated with the activity. If no final or draft document is available, a list of all remaining agency regulatory approvals being sought shall be included.

(f) If the federal license or permits required for the activity include a FERC license or amendment to a FERC license, a complete copy of a draft application for the FERC license or amendment of the FERC license meeting the requirements of

Subsection 4.38(c)(4) of Title 18 of the Code of Federal Regulations is required.

(g) A copy of any draft or final CEQA document(s), if available, prepared for the activity.

(h) A complete project description, including:

- 1) address (including city and county), assessor's parcel number and, if available, the longitude and latitude of the project site.
- 2) name(s) and hydrologic unit(s) of any receiving water body(ies) that may receive a discharge.
- 3) type(s) of receiving water body(ies) (e. g., river/streambed, lake/reservoir, ocean/estuary/bay, riparian area, or wetland).
For each water body type reported under Subsection (h)(2) of this Section, the total estimated quantity of waters of the United States and the types of discharge material(s) that may temporarily or permanently impact the waters of the state.
The estimated quantity of waters to be adversely impacted by any discharge shall be reported in acres and, for channels, shorelines, riparian corridors, and other linear habitat, linear feet, except that dredging estimates shall be reported in cubic yards.
- 4) the total estimated quantity (in acres and, where appropriate, linear feet) of waters of the United States, by type (see Subsection (h)(3) of this Section) proposed to be created, restored, enhanced, purchased from a mitigation or conservation bank, set aside for protection, or otherwise identified as compensatory mitigation for any anticipated adverse impacts. If compensatory mitigation is to be provided in some other form, that shall be explained.
- 5) a description of any other steps that have been or will be taken to avoid, minimize, or compensate for loss of or significant adverse impacts to beneficial uses of waters of the state.
- 6) the total size (in acres), length (in feet) where appropriate, type, and description of the entire project area, including areas outside of jurisdictional waters of the United States.
- 7) a brief list/description, including estimated adverse impacts of any projects implemented by the project applicant within the last five years or planned for implementation by the applicant within the next five years that are in any way related to the proposed activity or that may impact the same receiving water body(ies) as the proposed activity. For purpose of this item, the water body extends to a named source or stream segment identified in the relevant Regional Water Quality Control Plan (Basin Plan).

(i) The notification must be signed by the applicant or the applicant's agent (if an agent is submitting the notification). The notification must include a statement that the submitted information is complete and accurate.

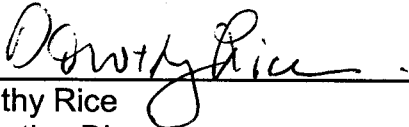
B. Denial:

The remaining 35 NWP's are hereby denied certification without prejudice. These 35 NWP's, listed in Table B, have a wide breadth and scope of activities such that their potential direct, indirect, and cumulative impacts could reasonably invalidate their exemption from CEQA. Denial of certification of these 35 NWP's does not affect the State Water Board's ability to certify these NWP's at a future time. CWA Section 401 certification of projects authorized by these 35 NWP's will be considered on an individual, project-specific basis.

REVISED

TABLE B – Nationwide Permits Denied Certification Without Prejudice

NWP No.	NATIONWIDE PERMIT DESCRIPTION	NWP No.	NATIONWIDE PERMIT DESCRIPTION
2	Structures in Artificial Canals	30	Moist Soil Management for Wildlife
3	Maintenance	31	Maintenance of Existing Flood Control Facilities
7	Outfall Structures and Maintenance	33	Temporary Construction, Access and Dewatering
8	Oil and Gas Structures On the Outer Continental Shelf	35	Maintenance Dredging of Existing Basins
12	Utility Line Activities	36	Boat Ramps
13	Bank Stabilization	37	Emergency Watershed Protection and Rehabilitation
14	Linear Transportation Projects	39	Residential, Commercial, and Institutional Developments
15	U.S. Coast Guard Approved Bridges	40	Agricultural Activities
16	Return Water from Upland Contained Disposal Areas	41	Reshaping Existing Drainage Ditches
17	Hydropower Projects	42	Recreational Facilities
18	Minor Discharges	43	Stormwater Management Facilities
19	Minor Dredging	44	Mining Activities
21	Surface Coal Mining Operations	45	Repair of Uplands Damaged by Discrete Events
23	Approved Categorical Exclusions	46	Discharges in Ditches
25	Structural Discharge	47	Pipeline Safety Program Designated Time Sensitive Inspections and Repairs
26	RESERVED (Not included in this certification)	48	Existing Commercial Shellfish
27	Aquatic Habitat Restoration, Establishment, and Enhancement Activities	49	Coal Remaining Activities
29	Residential Developments	50	Underground Coal Mining Activities


 Dorothy Rice
 Executive Director
 State Water Resources Control Board

May 11, 2007
 Date